

**Eazor Express, Inc. and Joseph M. Pantoja. Case 13-CA-21168**

7 May 1984

# **SUPPLEMENTAL DECISION AND ORDER**

**BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND HUNTER**

On 12 September 1983 the National Labor Relations Board issued a Decision and Order<sup>1</sup> in the above-entitled proceeding in which the Board, inter alia, ordered the Respondent to make whole certain employees for any loss of pay suffered by reason of the Respondent's discrimination against them. On 10 November 1983 the United States Court of Appeals for the Seventh Circuit entered its judgment enforcing the Board's Order. A controversy having arisen over the amount of backpay due under the Board's Order, as enforced by the court, the Regional Director for Region 13, on 10 January 1984, issued a backpay specification and notice of hearing alleging the amounts of backpay due the discriminatees under the Board's Order and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. The Respondent failed to file such an answer.

Thereafter, on 21 February 1984, counsel for the General Counsel filed directly with the Board a Motion to Transfer Proceedings to the Board and Motion for Summary Judgment, with exhibits attached. Subsequently, on 23 February 1984, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. The Respondent failed to file a response to the Notice to Show Cause.<sup>2</sup>

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following

## **Ruling on the Motion for Summary Judgment**

Section 102.54 of the Board's Rules and Regulations, Series 8, as amended, provides in pertinent part:

(a) . . . the respondent shall, within 15 days from the service of the specification, if any, file an answer thereto. . . .

(c) . . . If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without notice to the respondent, find the specification to be true and enter such orders as may be appropriate.

The backpay specification, issued and served on the Respondent on or about 10 January 1984, specifically states that the Respondent shall, within 15 days from the date of the specification, file with the Regional Director for Region 13 an answer to the specification and that, if the answer fails to deny the allegations of the specification in the manner required under the Board's Rules and Regulations and the failure to do so is not adequately explained, such allegations shall be deemed to be admitted to be true and the Respondent shall be precluded from introducing any evidence controverting them. In his Motion for Summary Judgment, the General Counsel states that, on 27 January 1984, an agent of the Regional Director mailed a certified letter to the Respondent informing the Respondent that it had not yet filed an answer to the backpay specification and notice of hearing, and that failure to do so by close of business 6 February 1984 would result in a recommendation that a Motion for Summary Judgment be filed with the Board. The Respondent did not file an answer. As the Respondent has not filed an answer to the specification, has not offered any explanation for its failure to do so, and has also failed to file a response to the Notice to Show Cause, the allegations of the specification and of the Motion for Summary Judgment stand uncontroverted. Therefore, in accordance with the rules set forth above, the allegations of the specification are deemed to be admitted as true and are so found by the Board without the taking of evidence in support of the allegations.

Accordingly, the Board concludes that the net backpay due discriminatees Joseph M. Pantoja and Clarence Meitner, and the payments due to the appropriate trust funds are as stated in the computations of the specification, and orders the payment

<sup>1</sup> 267 NLRB 1180.

<sup>2</sup> On 8 March 1984 the Respondent filed a Motion for Stay of Proceedings to which the General Counsel filed a response. The Respondent argues that an involuntary petition filed against it under ch. 7 of the Bankruptcy Code triggers the automatic stay provision of the code. See 11 U.S.C. § 362(a). We deny the motion, however, because the automatic stay provision does not operate to stay Board proceedings in the compliance stage which fix the amount of the debtor's monetary liability for having committed unfair labor practices. Board proceedings fall within the exceptions to the automatic stay provision for proceedings by a governmental unit to enforce its police or regulatory powers. *D. M. Barber, Inc. v. Valverde*, 110 LRRM 3095 (U.S. Bk. Ct. 1981); see also *NLRB v. Evans Plumbing Co.*, 639 F.2d 291 (5th Cir. 1981); *M & M Transportation Co.*, 239 NLRB 73 (1978).

thereof by the Respondent to the discriminatees and the trust funds.

### ORDER

The National Labor Relations Board hereby orders that the Respondent, Eazor Express, Inc., Forest View, Illinois, its officers, agents, successors, and assigns, shall

1. Make whole the discriminatees named below, by payment to them of the amounts following their names, plus interest thereon to be computed in the manner prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977),<sup>3</sup> until payment of all backpay is made, less tax withholdings required by Federal and state laws:

<sup>3</sup> See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

Joseph M. Pantoja	\$12,004.62
Clarence Meitner	\$ 5,563.63

2. Make the discriminatees whole by paying to the trust funds listed below the amounts plus interest, if any, following their names.<sup>4</sup>

#### Teamsters Local 705 Pension Fund:

Joseph M. Pantoja	\$820.83
Clarence Meitner	\$429.46

#### Teamsters Local 705 Health & Welfare Fund:

Joseph M. Pantoja	\$754.76
Clarence Meitner	\$370.51

<sup>4</sup> See generally *Merryweather Optical Co.*, 240 NLRB 1213 (1979).